

BOARD OF CODE STANDARDS AND APPEALS

MINUTES

July 10, 2006

Members: Francisco Banuelos, Randy Coonrod, Randy Harder, Richard Hartwell, Bernie Hentzen, Gerald Herzberg, Ed Murabito, Warren Willenberg, John Youle

Present: Banuelos, Coonrod, Harder, Hentzen, Murabito, Youle

Absent: Herzberg, Hartwell, Willenberg

Staff Members Present: Kurt Schroeder, Sharon Dickgrafe, Darlene Hultman, Elaine Hammons

The regular meeting of the Board of Code Standards and Appeals was called to order by Chairman Murabito on Monday, June 5, 2006, at 1:33 p.m. in the 1st floor Board Room, City Hall, 455 N. Main, Wichita, Kansas.

Chairman Murabito requested that the Board Members and City staff introduce themselves.

1. Approval of the Minutes of the June 5, 2006, meeting.

Board Member Hentzen made a motion to approve the minutes as submitted. Board Member Harder seconded the motion. The motion carried, unopposed. (Board Member Coonrod was absent during this vote.)

2. Approval of the July, 2006, license examination applications as follows:

<u>Name</u>	<u>Class</u>	<u>Test Date</u>
Jesse Smith	Roofing & Siding	July 2006
Nicholas A. McCully	Roofing & Siding	July 2006
Brad Hackworth (off-agenda)	Roofing & Siding	July 2006

Board Member Hentzen made a motion to approve the license applications for testing. Board Member Youle seconded the motion. The motion carried, unopposed. (Board Member Coonrod was absent during this vote.)

3. Condemnation Hearings

There are no properties scheduled for the July, 2006, hearing.

4. Request by Jerry A. Dodson to allow the reinstatement of his Class B Contractor License without retesting.

Chairman Murabito asked Mr. Dodson to explain the circumstances surrounding his request of the Board to allow the reinstatement of his Class B Contractor License without testing.

Mr. Dodson informed the Board that he had been licensed for a number of years when he was diagnosed with cancer in November of 2004. During 2005, Mr. Dodson did not renew his license because he was too ill to work while undergoing treatment for his health condition. Since that time, Mr. Dodson's health has shown a great deal of improvement, and he feels that he is capable of working as a contractor again.

Board Member Hentzen inquired of Mr. Schroeder whether he was aware of any issues regarding Mr. Dodson contracting business in the past that might preclude the Board from considering the request to waive retesting. Mr. Schroeder replied that he was not aware of any problems.

Board Member Hentzen made a motion that Mr. Dodson's Class B Contractor License be reinstated without retesting and without penalty. Board Member Harder seconded the motion. The motion carried unanimously.

5. Appeal action against Tim Henry d/b/a American Builders, L.L.C.:

- a. regarding the construction of a room addition, installation of a roof on the house and the garage, removal and installation of a concrete porch with roof, and installation of vinyl siding on all exterior concrete walls of the house at 1151 N. Hydraulic (Cheryl Carter);
- b. regarding the remodel of the dwelling at 1031 S. Christine (Janice Kirk).

Sharon Dickgrafe, an attorney on staff with the Law Department, City of Wichita, gave a preliminary statement to the Board. Ms. Dickgrafe noted that the appeal action against Tim Henry d/b/a American Builders, L.L.C., was originally scheduled to be heard at the Board of Codes Standards and Appeals at the June, 5, 2006, hearing. Mr. Henry had requested that the hearing be deferred until July 10, 2006, in order to retain counsel, attorney Kent Collins, to appear with him in Mr. Henry's behalf. The morning of the July 10, 2006, hearing, Mr. Collins telephoned Mr. Schroeder, requesting that the appeal be deferred again. After Mr. Schroeder and Ms. Dickgrafe discussed the request, it was determined that the Board should make the decision whether it would grant a continuance for thirty days, or whether the appeal should be heard as scheduled at the July hearing. Ms. Dickgrafe then yielded the floor to Mr. Collins for his comments.

Mr. Collins was in agreement with Ms. Dickgrafe's remarks. He went on to state that his particular concern was that a member of the Board of Code Standards

and Appeals had approached a customer of Mr. Collins' client; according to the customer, the Board Member had told her that Mr. Henry's license was going to be revoked at the July 10th hearing. Mr. Collins expressed concern that the Board may be predisposed to revocation where the hearing is supposed to be open and impartial. Mr. Collins said that he was informed that morning that the Board Member in question had recused himself and would not attend the hearing.

Having spoken with Mr. Schroeder on the Friday prior to the July 10th hearing, Mr. Collins said that he had at that time informed Mr. Schroeder that "a city inspector had been in contact" with his client. Mr. Collins inquired directly of Mr. Schroeder how the individual had come to recuse himself, if Mr. Schroeder had discovered the identity of the individual, or if the person had come to Mr. Schroeder. Mr. Schroeder explained that the details provided by Mr. Collins during the conversation on the previous Friday were rather vague; after questioning the inspection staff, Mr. Schroeder was unable to find anyone that had been to that particular location recently. On the morning of July 10th, Mr. Schroeder said that a Board Member came to his office and informed Mr. Schroeder that he had talked with a neighbor concerning the issue of the appeal regarding Mr. Henry; the Board Member had advised the neighbor that some action had been taken and recorded by the District Attorney's office, and that also there was an appeal scheduled to be heard by the Board of Code Standards and Appeals regarding Mr. Henry's license. The Board Member then told Mr. Schroeder that under those circumstances, he would not attend the meeting where the appeal would be heard.

Mr. Collins asked for the name of the Board Member that had disqualified himself from the hearing. Mr. Schroeder responded that the Board Member was Warren Willenberg. Mr. Collins inquired whether Mr. Willenberg was a City employee to which Mr. Schroeder replied that Mr. Willenberg was not employed by the City of Wichita. Mr. Collins asked whether Mr. Schroeder was considering any disciplinary action toward Mr. Willenberg. Mr. Schroeder asserted that he was not considering any such action. Ms. Dickgrafe interjected that, since the Board positions were appointed by members of the City Council, any investigation into a Board Member's conduct, removal from the Board, or disciplinary action would be handled by the City Council. Mr. Collins polled the Board on its ability to be fair and impartial. The Board signified that it harbored no prejudice.

A motion was made by Board Member Harder to deny the request for continuance and proceed with the hearing. Board Member Coonrod seconded the motion. The motion carried, unopposed.

At Mr. Schroeder's direction, Ms. Hultman gave a brief account of the complaint filed by Ms. Carter regarding her property at 1151 N. Hydraulic. In March of 2004, Ms. Carter contracted with Mr. Henry d/b/a American Builders, LLC, to construct a room addition; install a roof on the house and the garage; remove and install a concrete porch with roof; and install vinyl siding on all exterior concrete walls of the house at 1151 N. Hydraulic. After paying more than \$17,700.00 to Mr. Henry, there was very little progress on Ms. Carter's house. Ms. Carter filed a complaint with the District Attorney's office, which contacted Central Inspection, requesting intervention on Ms. Carter's behalf.

Mr. Collins described the difficult conditions under which Mr. Henry had tried to work on Ms. Carter's property. There had been an extended period where their communication had halted, preventing the necessary arrangements for Mr. Henry and/or his agents to gain access to do the work. Ultimately, Mr. Neil Lugan and Mr. James Price took over the remainder of the work to be done at Ms. Carter's property. As the primary representative of American Builders, LLC, Mr. Price was able to complete the work and obtain final inspection approval.

Mr. Henry informed the Board that, acting on his authority, Mr. Price had gone beyond the scope of the original contract and had added numerous improvements at no cost to Ms. Carter. The intent, Mr. Henry said, was to mitigate the damage done by his company's failure to complete the job that was contracted with her in a timely manner.

Additionally, Mr. Henry told the Board that he had been dealing with personal issues during the time frame when the contract was initiated for Ms. Carter's home. The personal trauma had prevented him from functioning at his job and had caused a severe financial strain. Once he had recovered from the personal trauma, he resumed control of his company and began working to allay the strain that his circumstance had put on his business dealings.

There was discussion among the Board Members whether a motion should be made regarding Ms. Carter's complaint, or to listen to the second appeal and make all motions and determinations based on both cases. The decision was made to hear both cases before making any formal motions.

Ms. Hultman then gave an overview of the problems incurred by Ms. Janice Kirk regarding her property at 1031 S. Christine. After signing a contract with Mr. Henry d/b/a American Builders, LLC, in December of 2001. The full amount, \$31,000.00, was paid to Mr. Henry in January of 2002. Although work began in March of 2002, the progress halted shortly thereafter, and did not resume until approximately June of 2006.

At the request of the Chairman Murabito, Ms. Kirk also described the delays that she experienced in her dealings with Mr. Henry d/b/a/ American Builders, LLC. The contracted work was completed and a final inspection requested the same morning as the Board hearing. All code items had been approved. Ms. Kirk said there were other items that Mr. Henry and/or Mr. Price had agreed to do that were awaiting completion.

Mr. Collins noted that, as in Ms. Carter's case, Ms. Kirk had received additional improvements that had not been covered in the original contract; and Mr. Henry was not requesting any monies beyond what Ms. Kirk had already paid out. The extra work, Mr. Collins assured the Board, was a good faith attempt by Mr. Henry to assuage the distress that Ms. Kirk had experienced in her dealings with Mr. Henry's company. Mr. Henry personally expressed his regret for the delay in completing the remodel on her property.

A motion was made by Board Member Coonrod to place the Class B Contractor's License of Tim Henry d/b/a/ American Builders, L.L.C., on probation for a period of one year, citing paragraphs (b) and (g), Chapter 18.12.140 Revocation, from the Code of the City of Wichita, Kansas, as the basis for his motion. As a term of the probation, Board Member Coonrod also specified that the work on Ms. Kirk's property at 1031 S. Christine be completed within sixty days. Board Member Coonrod emphasized that Mr. Henry's attempt to resolve the issues with both property owners prior to Mr. Henry's appearance before the Board was the only factor that prevented Board Member Coonrod from making a motion for suspension of Mr. Henry's contractor's license. Board Member Hentzen seconded the motion. The motion carried unanimously.

6. Request by Ed Glover d/b/a Glover Enterprises, Inc., to address the Board regarding the revocation of his Class C Contractor License at the Board of Code Standards and Appeals Hearing of April 3, 2006.

Mr. Greg Barker, attorney for Ed Glover d/b/a Glover Enterprises, Inc., accompanied Mr. Glover.

Mr. Schroeder apprised the Board of his attempt to contact Mr. Glover by certified letter and regular mail to inform him of his right to appeal the Board's decision to the City Council. The certified letter was returned, as was the case with other correspondence previously sent to Mr. Glover.

After the deadline for making an appeal to the City Council had passed, Mr. Glover did contact Mr. Schroeder, requesting that he be allowed to appeal the Board's decision. After consulting with City Attorney, Doug Moshier, Mr. Schroeder was advised that Mr. Glover could not appeal to the City Council; however, Mr. Glover could address the Board of Code Standards and Appeals.

At Mr. Schroeder's request, Ms. Hultman gave a recap of the events surrounding the Board's decision to revoke Mr. Glover's Class C Contractor License. At the March 6, 2006, Board of Code Standards and Appeals hearing, a complaint was filed against Mr. Ed Glover d/b/a Glover Enterprises, Inc., for constructing a carport without the required permit. In spite of several attempts to make contact with Mr. Glover, both by certified mail, regular mail and phone calls, the Board received no response from Mr. Glover. In April, 2006, the Board rendered a decision to revoke the Class C Contractor License held by Ed Glover.

Chairman Murabito asked Mr. Glover to address the Board. Speaking on Mr. Glover's behalf, Mr. Barker explained to the Board that Mr. Glover's wife has been the office manager in his contracting business. Because Mr. and Mrs. Glover have undergone serious marital difficulties, that has resulted in Mr. Glover not getting all of the notices/communications from Central Inspection. Under those circumstances, Mr. Barker asked that the Board consider placing Mr. Glover's license on a probation status, and allow him to take corrective action regarding the permit for the carport at 2724 N. Vassar. Ms. Dickgrafe advised the Board that the

Code, Section 11.12.150, requires that the violation must be corrected before a license, revoked or suspended for that reason, can be reinstated.

Board Member Harder made a motion that Mr. Glover be allowed to get the required permit for the carport (2724 N. Vassar); pass any required inspections for that job; resolve any open and/or expired permits issued under is Class C Contractor License; and then reappear before the Board. Board Member seconded the motion. The motion passed.

With no other business to conduct, a motion to adjourn was made by Board Member Coonrod. Board Member Youle seconded the motion. The motion carried unanimously.

The meeting was adjourned at 3:00 p.m.